



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 27, 1995

Ms. Rosalinda García  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR95-097

Dear Ms. García:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29765.

The Director of Communications for Harris County (the "county") received two open records requests for certain cellular telephone records held by the Harris County Commissioners Court. Specifically, the requestors seek the cellular telephone logs for all four Harris County Commissioners as well as those of the county judge for the period from September 1993 through September 1994 and cellular telephone records of a particular county commissioner for the period from December 1992 through September 1994, respectively.

You contend that some of the requested information might come under the protection of sections 552.101, 552.108, or 552.117 of the Government Code. For example, you contend that some of the listed telephone numbers may reveal law-enforcement officials' home telephone numbers, which are made confidential under section 552.117(1)(B). Further, you express concern that the requested records reflect the home telephone number of public employees who have elected to make this information confidential under section 552.024 of the Government Code, or who have reported a violation of law, thereby triggering the informer's privilege as incorporated with section 552.101, or the law-enforcement exception, section 552.108. You also suggest that releasing some of the telephone numbers might implicate the privacy interests of certain crime victims.

You have not, however, identified any particular listings in the records at issue that come within the protection of these exceptions. Rather, you argue that because the county does not keep a separate log that specifies the nature of each of the listed

telephone calls, separating the protected telephone numbers from the public ones would constitute an “administrative nightmare,” especially in light of the fact that the county has over 10,000 employees, each of whom may or may not have elected to keep their home telephone numbers confidential. You therefore inquire whether the county may withhold the entire list of telephone numbers pursuant to sections 552.101, 552.108, and 552.117.

We note at the outset that section 552.022 of the Government Code provides in pertinent part:

Without limiting the meaning of other sections of this chapter, the following categories of information are public information:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, *if the information is not otherwise made confidential by law.*  
[Emphasis added.]

Section 552.022(3) reflects the legislative intent that information regarding the receipt or expenditure of public funds should ordinarily be available to the public. Although section 552.022 does not override the exceptions listed in subchapter C of chapter 552, it does at a minimum heighten the burden of proof that information is excepted from required public disclosure. Open Records Decision No. 518 (1989) at 7.

Consequently, absent a demonstration to this office that certain information contained in the cellular telephone bills comes under the protection of a particular exception, this office cannot authorize the withholding of that information. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the particular records at issue, it will ordinarily waive the exception unless the information is deemed confidential under the act. *See* Attorney General Opinion JM-672 (1987); *see also Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with Open Records Act does not determine availability of information).

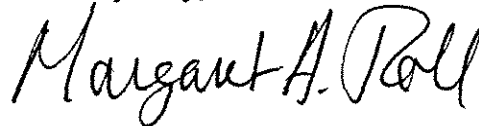
We therefore cannot conclude that you have met your burden in establishing that any portion of the requested telephone listings comes under the protection of the exceptions you raise. We nevertheless recognize the county’s dilemma: on the one hand, it is a criminal offense to release information deemed confidential by law, *see* Gov’t Code § 552.352, while on the other hand it is a criminal offense to refuse or fail to release public information, *see id.* § 552.353(a). Accordingly, if you are in fact concerned about either the county’s criminal or civil liability over the release of this information, we

encourage the county to take whatever steps necessary to ensure that none of the information it releases in response to these requests is confidential.<sup>1</sup>

In the event that the county determines that any of the telephone numbers are confidential under section 552.117, it may merely redact those numbers from the billing statement without further notice to this office. However, if the county intends to withhold any of the telephone numbers under common-law privacy or the informer's privilege as incorporated in section 552.101, or in order to protect a law-enforcement interest under section 552.108, you must submit those billing statements and your arguments for withholding the information to this office for review.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/RWP/rho

Ref.: ID# 29765

Enclosures: Submitted document

cc: Mr. Ron Regan  
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P.O. Box 2222  
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(w/o enclosures)

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<sup>1</sup>For example, you might consider asking the county commissioners and county judge to examine their own bills and identify the telephone numbers they called.